



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2900 FAX (603) 271-2456



Andrew Drobat  
477 Nashua Street  
Milford, NH 03055

**ADMINISTRATIVE ORDER  
No. WMD 01-05**

March 2, 2001

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Andrew Drobat pursuant to RSA 149-M:15,I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Andrew Drobat is an individual having a mailing address of 477 Nashua Street, Milford, NH 03055.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 149-M authorizes DES to regulate the management, transportation, and disposal of solid waste in New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Andrew Drobat and Michelle Coleman are the owners of land located off Rangeway Road which continues into Leg Ache Hill Road in Dunbarton, NH, more specifically described in a deed recorded in the Merrimack County Registry of Deeds at Book 2206, Page 341, and identified on Dunbarton Tax Map D4 as Lot 2-3 ("Drobat/Coleman property"). A right-of-way to the Drobat/Coleman property exists through property owned by Henry Langley, more specifically described in a deed recorded in the Merrimack County Registry of Deeds, Book 2015, Page 331, and identified on Dunbarton Tax Map D4 as Lot 2-6 ("Langley property"). Access to the Drobat/Coleman property is also reported to be allowed by permission through property owned by Michael Hayward, more specifically described in a deed recorded in the Merrimack County Registry of Deeds, Book 2206, Page 340, identified on Dunbarton Tax Map D4 as Lot 2-5 ("Hayward property").
3. The Drobat/Coleman property, Langley property and Hayward property are all located within the Low Density District in Dunbarton, NH. Permitted uses in the Low Density District include residential, agricultural, and some public/institutional. Residential structures currently exist on the Langley and Hayward properties. A residence is planned for the Drobat/Coleman property.

4. On October 20, 2000, DES personnel received a verbal complaint via telephone alleging that thermally-treated soils were being transported from Environmental Soil Management, Inc. in Loudon, NH ("ESMI facility") and placed on a residential property owned by Andrew Drobat located off Rangeway Road that continues into Leg Ache Hill Road in Dunbarton, NH.
5. The ESMI facility is a thermal desorption unit for the treatment of non-hazardous contaminated soils and other media. It is permitted by DES as a solid waste treatment facility (Permit #DES-SW-SP-96-002).
6. On October 25, 2000, DES personnel received a written complaint (dated October 19, 2000) alleging that treated contaminated waste soils were being transported from the ESMI facility and placed on residential property on Rangeway Road in Dunbarton, NH.
7. On October 25, 2000, DES personnel visited the Dunbarton town offices and learned that soils from the ESMI facility had been placed on the three residential properties identified in C.2 above.
8. On October 26, 2000, DES personnel inspected the Hayward property to determine the type and source of soils being placed on the property. Also present at this visit were Mr. Drobat, joint owner of one of the properties and an employee of ESMI; Ms. Christine Nardini, ESMI's Director of Regulatory Affairs; and Mr. Mark Aubrey, also of ESMI.
9. During the inspection on October 26, 2000, Mr. Drobat was asked if there was a representative pile of material on the Hayward property that was brought to the site from the ESMI facility, and not mixed with any materials.
10. Mr. Drobat identified such a pile of thermally-treated soil that came from the ESMI facility that he was using for general driveway fill on the Hayward property. DES personnel took a sample of the material so identified. Mr. Drobat indicated that the ESMI material used at the Hayward property contained a higher proportion of fines than the ESMI material used at the Langley and Drobat/Coleman properties. Ms. Nardini stated that 2,900 tons of boulders and screenings were used at the properties.
11. On November 28, 2000, DES personnel again visited the Hayward property, where a meeting was held with representatives of ESMI and ESMI's attorney.
12. At that meeting, ESMI's attorney asserted that the materials the DES representatives were seeing in the fill on the Hayward property, and that was also used in the right-of-way on the Langley and Drobat/Coleman properties, consisted of screened stone sized between ¼ inch and 2 inches taken from the thermally-treated stockpiles of material at the ESMI facility and mixed by Mr. Drobat at the Hayward property with loam and clean sands from other sources. The attorney, Mr. Drobat, and Ms. Nardini all verified that material transported from the ESMI facility and placed on the three residential properties identified in C.2 above included stone screenings between ¼ inch and 2 inches in size that originated from thermally-treated soils.
13. The ESMI attorney also asserted that boulders 8-inches in diameter and larger that were removed from the incoming contaminated soils at the ESMI facility and that had been steam cleaned subsequent to removal from the contaminated soils were also taken to the properties identified in C.2 above for use in the driveway fill.

14. During the visit to the property on November 28, 2000, Mr. Drobat was asked if any material other than that described by the ESMI attorney had been brought to the Hayward property from the ESMI facility. Mr. Drobat stated that only steamed-cleaned boulders 8-inches in diameter or greater, and screened stone between ¼ and 2 inches in size had been brought to the Hayward property from the ESMI facility, contradicting his prior representation to DES .

15. Env-Wm 3203.11 specifies that "Clean soil derived from contaminated soil, by having fully treated the soil at an authorized facility to meet the standards specified in Env-Wm 2603, shall be deemed certified for distribution and use as soil, excluding uses: (a) in residential applications".

16. Env-Wm 3203.11(a) does not specify a particle size that would be exempt from the prohibition against using treated soils on residential properties.

17. Pursuant to the Bypass and Residual Waste Management Plan included as a component of ESMI's approved Operating Plan (ref. WMD Log#199800382, DES approval date March 15, 2000), only 8-inch or larger steam cleaned boulders removed from the incoming waste stream at the facility are allowed for use as general fill.

#### **D. DETERMINATION OF VIOLATIONS**

1. Andrew Drobat has violated Env-Wm 3203.11(a) by using contaminated soils treated by a thermal desorption process in a residential application.

#### **E. ORDER**

Based on the above findings, DES hereby orders Andrew Drobat as follows

1. **Within 15 days** of this Order, submit a signed certification to DES stating that if material from the ESMI facility will continue to be used for general fill on the properties identified C.2 above, only materials that are permitted for use in residential application will be used.

2. **Within 30 days** of this Order, notify DES in writing of whether the ESMI material currently at the properties identified in C.2 above will be removed in accordance with E.3 or will be permanently covered in accordance with E.4.

#### **3 Removal Option:**

(a) **By June 30, 2001**, remove all thermally-treated soils from the three residential properties identified in C.2 above.

(b) **By July 31, 2001**, certify in writing to DES that all material has been removed in accordance with this paragraph. Certification shall include records verifying the quantities removed and identifying the locations to which, or persons to whom, the thermally-treated soils were transferred.

**3 Permanent Cover Option:**

(a) **By May 31, 2001**, cover all thermally-treated soils at the three residential properties identified in C.2 above that are less than 2 feet below the surface of the ground with a geotextile, as defined in Env-Wm 102.75, overlain by no less than 6-inches of uncontaminated soil material, not including soil certified pursuant to Env-Wm 3202.11, or cover completely with pavement.

(b) **By June 30, 2001**, certify in writing that all thermally-treated soils from the ESMI facility have been permanently covered in accordance with this paragraph.

(c) **By July 31, 2001**, record notice of the location of the thermally-treated soils in the registry of deeds in the chain of title for the three properties identified in C.2 above. The notice shall indicate that any excavation, reuse and disposal of the thermally-treated soils shall be expressly prohibited without prior written authorization from DES.

4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Juranty, P.E., Civil Engineer V  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-2456  
e-mail: [mjuranty@des.state.nh.us](mailto:mjuranty@des.state.nh.us)


**F. APPEAL**

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Andrew Drobat of the obligation to comply with the Order.

**G. OTHER PROVISIONS**

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Andrew Drobat remains obligated to comply with all applicable requirements, in particular RSA 149-M and the New Hampshire Solid Waste Rules. DES will continue to monitor Mr. Drobat's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with each parcel the land.

  
**COPY**  
Philip J. O'Brien, Ph.D., Director  
Waste Management Division

  
**COPY**  
Robert W. Varney, Commissioner

**Certified Mail/RRR:7099 3400 0002 9770 6159**

cc: Gretchen Rule, DES Enforcement Coordinator  
Public Information Officer  
DES PIC Office  
NH DOJ-AGO  
Town of Dunbarton  
Michelle Coleman, Property Owner  
Henry Langley, Property Owner  
Michael Hayward, Property Owner  
Michael Juranty, P.E., DES-WMD